IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

RFA.No. 23 of 2007()
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AGAINST THE ORDER DATED 16/03/2004 IN IA 4166/01 IN OS.357/2001 of PRINCIPAL SUB COURT,KOLLAM

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APPELLANT/1ST RESPONDENT
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SIVASANKARA PILLAI, S/O.KUTTAN PILLAI,
SANKARA VILASOM, PUNTHALATHAZHAM, KOLLAM.

BY ADV. SRI.P.B.SURESH KUMAR

RESPONDENTS: 2ND RESPONDENT/PETITIONER
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1. MANU RAJ, S/O.SIVASANKARA PILLAI,
SARANYA, PUNTHALATHAZHAM,
VADAKKEVILA, KILIKOLLOOR P.O., KOLLAM.

2. P.K.SADANANDAN PILLAI,
S/O.KESAVA PILLAI, ANAND, PUNTHALATHAZHAM CHERRY,
VADAKKEVILA, KOLLAM.

BY ADV. SRI.C.UNNIKRISHNAN (KOLLAM)

THIS REGULAR FIRST APPEAL HAVING COME UP FOR ADMISSION ON 09/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.R.RAMAN & V.K.MOHANAN, JJ.**

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**C.M.APPL.NO.72 OF 2007 &**
**R.F.A.NO.23 OF 2007**

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**Dated this the 9th day of October, 2007**

## JUDGMENT

Raman, J.

This is an application for condonation of delay in filing the appeal. The sole appellant died on 12/8/2007. I.A.No.3400/2007 was filed by the legal representatives of for getting themselves impleaded in the appeal. That application was filed on 13/9/2007. When the matter came up for consideration 20/9/2007 C.M.APPL.No.72/2007 is recorded as allowed. On that day however there was no petition even by the legal representatives to get themselves impleaded in the said application for condonation of delay. Such an application was filed as per I.A.No.3675/2007 later on 28/9/2007. I.A.No.3400/2007 was however not ordered on 20/9/2007. In these factual background as rightly contended by the parties that C.M.Appl.No.72/2007 could not have been allowed as on 20/9/2007 and it is a mistake apparent on the face of the record. . Hence, we suo motu review the order passed on 20/9/2007 in C.M.Appl.No.72/2007 and reheard.

2. Heard both sides and the following order is passed.

This application is filed for condonation of delay of 469 days in filing the appeal. In the counter affidavit filed by the 2nd respondent it is stated that the delay is 859 days. No reply affidavit is filed. The delay of 469 days is explained in the affidavit as against the total delay of 869 days and that there is no explanation for the delay beyond 469

days. Further in the affidavit supporting the petition is sworn into by a Clerk attached to the office of the counsel for the appellant before the trial court. He has stated the circumstances under which he happened to apply for the certified copy at a belated stage. According to him, certified copy was obtained on 18/7/2006 and after the certified copy was obtained, the case bundle was misplaced and therefore he could not contact the appellant and only in the last week of September, 2006 the case bundle was traced out and the appeal was accordingly filed. In the counter affidavit filed by the 2nd respondent it is stated that the petitioner frequently appeared in I.P.23/01 before the Sub Court, Kollam for declaring the lst respondent herein as insolvent and that the case was also conducted by the very same counsel. Various posting dates are also given in paragraph 4 of the counter affidavit. Therefore, it is rightly contended that the Advocate Clerk could not find out the address of the appellant. As already stated these facts are not controverted by filing any reply affidavit. Hence, we find that the delay has not been properly explained. Further the appeal is against an order lifting the attachment and it was found that as on the date of attachment the property already stood transferred by the defendant in favour of the respondent herein. Thus, as on the date of attachment, there was no saleable interest for the defendant. Thus there is hardly any reason to interfere even on merits.

For all the above reasons, the petition for condonation of delay and the appeal are dismissed.

**P.R.RAMAN,**
**Judge.**

**V.K.MOHANAN,**
**Judge.**

kcv.